

REMARKS

A. BACKGROUND

The present Amendment is in response to the Office Action mailed June 9, 2009. Claims 1, 2, 5-8, 15-17, 21-23, and 26-32 were pending and rejected in view of cited art.¹ Claims 1-2, 15-16, 23, 26, 30, and 32 are amended. Claims 1, 2, 5-8, 15-17, 21-23, and 26-32 remain pending in view of the above amendments.²

Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicant requests that the Examiner carefully review any references discussed below to ensure that Applicant's understanding and discussion of the references, if any, are consistent with the Examiner's understanding.

B. REJECTION UNDER 35 U.S.C. § 112, SECOND PARAGRAPH

The Office Action rejected claim 32 under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In response, Applicant has amended dependent claim 32 to depend from claim 30. In view of the amendment to claim 32, Applicant respectfully requests withdrawal of the rejection under 35 U.S.C. § 112, second paragraph.

C. PRIOR ART REJECTIONS

I. REJECTION UNDER 35 U.S.C. § 103

The Office Action rejected claims 1, 2, 5-7, 26-29, and 32 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,758,859 (*Dang*) in view of U.S. Patent No. 6,071,305

¹ Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should the need arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

(*Brown*). Claim 8 was rejected under 35 U.S.C. § 103(a) as being unpatentable over *Dang* in view of *Brown* as applied to claim 1, and further in view of U.S. Publication No. 2002/0038146 (*Harry*). Claims 1, 2, 5, 6, and 23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,882,335 (*Leone*) in view of U.S. Patent No. 5,443,498 (*Fontaine*) and *Brown*. Claims 15-17, 21, 22, 30, and 31 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Dang* in view of *Brown* and EP Publication No. EP1057460 (*Tower*). Applicant respectfully traverses.

Dang was cited as disclosing "a stent having a plurality of tubular members 22 . . . It can also be seen each tubular member having one or more hollow core sections 30" (Office Action, Page 2). Applicant respectfully disagrees. *Dang* discloses that "one embodiment of the stent 10 includes one or more resiliently flexible elongated elements 22" (Col. 3, ll. 50-52). Applicant has been unable to find in *Dang* any teaching or suggestion that such "elements" are "tubular members" as recited in independent claim 1, 15, and 23, i.e., each tubular member "having a longitudinal hollow core section extending along a longitudinal axis of the tubular member."

Brown was cited as disclosing "a stent with core sections 20 filled with therapeutic material 23 and the stent having a plurality of pores 28 in communication with the core sections" (Office Action, page 3). *Brown* discloses a stent having "an elongated or tubular member 12 . . . in the shape of a coil or helix" or a stent fabricated using a helical or coiled groove that receives an agent (Col. 5, ll. 40-43; see Figs. 13-18). Applicant has been unable to find any teaching or suggestion in *Brown* of "a stent having a plurality of circumferential rings each having a plurality of upper peaks and lower peaks, the lower peaks of one circumferential ring being coupled to the upper peaks of an adjacent circumferential ring, each circumferential ring comprising a separate tubular member, each tubular member having a longitudinal hollow core section extending along a longitudinal axis of the tubular member," as recited, in part, by independent claim 1, or of "a first tubular member having a longitudinal hollow core section extending along a longitudinal axis of the first tubular member into a first circumferential ring having a plurality of upper and lower peaks . . . a second tubular member having a longitudinal hollow core section extending along a longitudinal axis of the second tubular member into a second circumferential ring having a plurality of upper and lower peaks, the second tubular member being separate from the first tubular member," as recited, in part, by claim 15 (emphasis added).

² Support for the claim amendments and/or new claim(s) can be found throughout the specification and/or drawings as originally filed.

Harry was cited as teaching "pores varying in size on the stent" and that those "pores . . . vary in shape on the stent" (Office Action, page 4). The Office Action recites that "[i]t would have been obvious to one of ordinary skill in the art to vary the size or shape of the pores as taught by *Harry* with the stent of *Dang* as modified by *Brown*" (*Id.*). Whether or not *Harry* teaches "pores varying in size on the stent," *Harry* fails to overcome the deficiencies of *Dang* and *Brown* with respect to the invention recited in independent claims 1 and 15.

Turning to *Leone*, as the Office Action correctly notes, *Leone* "fail[s] to explicitly disclose the stent is a plurality of tubular members with circumferential rings having upper peaks connected to lower peaks of adjacent tubular members" (Office Action, page 3). However, the Office Action asserts that *Fontaine* teaches "a stent with a plurality of tubular members having circumferential rings with the peaks and valleys of adjacent rings coupled together" and that it would have been obvious to one of ordinary skill in the art to modify *Leone* "to have a plurality of circumferential rings" (*Id.*). Applicant respectfully disagrees.

In particular, *Fontaine* does not disclose, teach, or suggest a plurality of tubular members. Rather, in direct contrast, *Fontaine* teaches a stent "includ[ing] a continuous wire which is formed into a substantially tubular body" (Abstract). Specifically, the "stent is formed from a continuous wire shaped into the planar pattern or waveform illustrated in FIG. 6" (Col. 5, ll. 53-55; see also Figure 6). The stent is then "formed by wrapping the waveform of FIG. 6 around a mandril" (Col. 6, ll. 36-37; see also Figure 7).

Applicant respectfully submits that the "continuous wire" stent of *Fontaine* is not the same as a stent including "a plurality of circumferential rings" with each ring "having a separate tubular member having a longitudinal hollow core section extending along a longitudinal axis of the tubular member" as recited, in part, by claims 1 and 23. Similarly, forming the "continuous wire" stent of *Fontaine* is not the same as "forming a first tubular member . . . into a first circumferential ring . . . forming a second tubular member . . . into a second circumferential ring . . . [and] forming a stent from the circumferential rings by coupling . . . the first circumferential ring to the . . . second circumferential ring," as recited, in part, by claim 15. Therefore, *Fontaine* does not disclose, teach, or suggest each and every element of claims 1, 15, and 23. Furthermore, the Office Action does not cite, nor has Applicant found, any portion of the remaining cited prior art references that remedy the deficiencies of *Fontaine* with respect to independent claims 1, 15, and 23. Accordingly, the cited prior art references – whether individually or in combination – fail to disclose, teach, or suggest each and every element of the

pending claims.

With respect to *Tower*, which was combined with *Dang* and *Brown*, it was cited as teaching "a stent where individual circumferential rings 21 are coupled together at welds 40 where a lower peak of a ring is coupled to the upper peak of an adjacent ring" (Office Action, page 5).

As mentioned above, neither *Dang* nor *Brown* teach or suggest the inventions claimed in independent claims 1, 15, or 23. The Office Action does not cite, nor has Applicant found, any portion of *Tower* that remedies the deficiencies of *Dang* or *Brown* or the other references with respect to independent claims 1, 15, and 23.

In view of the failure of *Dang*, *Brown*, *Harry*, *Leone*, *Fontaine*, and *Tower* – whether alone or in combination – to teach or suggest the inventions of independent claims 1, 15, and 23, Applicant respectfully requests that the rejection under Section 103 be withdrawn. For at least the same reasons, Applicant respectfully requests that the rejection of claims 2, 5-8, 16, 17, 21, 22, and 26-32 under Section 103 be withdrawn.

D. CONCLUSION

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as provide the required motivation or suggestion to combine references with the other art of record.

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For at least the foregoing reasons, Applicant respectfully submits that the pending claims are neither anticipated by nor made obvious by the art of record. In the event that the Examiner finds any remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 9th day of November, 2009.

Respectfully submitted,

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